IN THE UNITED STATES DISTRICT OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE FIELD OFFICE

CLAUDIA RAUSCH, on behalf of herself and others similarly situated,	:	EEOC NO. 531-2020-00310X
Complainant,	:	
v.	:	**AGENCY NO. HHS-HRSA-1024-2019**
XAVIER BECERRA, THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	:	ADMINISTRATIVE JUDGE ENECHI MODU
Agency.	:	May 21, 2021

COMPLAINANT 'S MOTION FOR CLASS CERTIFICATION
AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to 29 C.F.R. §1614.204, Federal Rule of Civil Procedure 23, and The Equal Employment Opportunity Commission ("EEOC")'s Management Directive 110 ("MD-110"), Complainant, Claudia Rausch, *Pro Se,* ("Ms. Rausch") respectfully moves for class certification on behalf of herself and other similarly situated federal employees, including former and future federal employees, for damages and injunctive relief, against The U.S. Department of Health and Human Services ("Agency" or "HHS") on the grounds that all class certification requirements are met as detailed below, and Ms. Rausch will retain counsel with the specialized experience, training, professional competence, and resources, as necessary to prosecute a class complaint. Ms. Rausch reserves the right to supplement this motion, and/or amend the request for relief sought, if necessary and upon the advice of counsel.

PRELIMINARY SUMMARY

The Rehabilitation Act of 1973 (Rehabilitation Act), as amended, prohibits employment discrimination against employees and applicants with disabilities in the federal service and requires that reasonable accommodations be provided with the same standards as the Americans with Disabilities Act ("ADA"), which prohibits discrimination based on disability by private and state or local government employers.

The United States government is the Nation's largest employer, and should be a model for the employment of individuals with disabilities pursuant to Executive Orders 13548 and 13163[1]. These Executive Orders direct federal agencies to improve their efforts to employ federal workers with disabilities and targeted disabilities through increased recruitment, hiring, and retention of these individuals.

According to the United States Department of Health and Human Services' ("Agency" or "HHS") Division of Federal Occupational Health ("FOH") website[2], "*FOH is the largest provider of occupational health services in the federal government, serving more than 300 federal agencies and reaching 800,000 federal employees*" and makes "*recommendations pertaining to employees' ability to perform the essential functions of a specific position as it relates to their medical condition(s)"* through services such as "*Reasonable Accommodation(s*) [recommendations]" and *"Fitness for duty (medical and psychological) [assessments] ".* Federal regulations, to include but not limited to, Parts 825 and 1630 of Title 29, and Part 339 of Title 5 of the Code of Federal Regulations, govern medical determinations related to fitness for duty, medical qualifications, and individualized assessments for reasonable accommodations in the federal sector. These federal regulations have long required the

[1] Executive Order 13548 -- Increasing Federal Employment of Individuals with Disabilities by U.S. President Obama, July 26, 2010 and Executive Order 13163 by U.S. President Clinton, July 26, 2000.
[2] https://foh.psc.gov/about

federal sector to adhere to routine healthcare industry standards and ensure medical decisions are made on objective evidence and sound medical judgement. The FOH website also provides that it's Medical Employability Program ("MEP") is compromised of board certified physicians and practitioners that "adhere to applicable Federal regulations".[3] FOH's website also proudly displays that it obtained accreditation from The Joint Commission ("TJC")[4] in 2015, and Agency public records provide that FOH has established policies and procedures to adhere to the healthcare industry's routinely used regulatory standards, as described in the TJC Standards for Occupational/ Worksite Health settings in Ambulatory Care[5].

Yet, in providing a medical review by an FOH Medical Reviewing Officer on April 16, 2020 to determine Ms. Rausch's qualifications for a reasonable accommodation, FOH did not follow any of the established protocols that are required of FOH by applicable federal regulations, The Joint Commission nor any of the healthcare industry standards of the medical profession, mentioned above and further described below. Nor was the April 16, 2020 FOH medical opinion determined on the basis of any objective evidence, clinical or non-clinical; resulting in a completely misrepresented and misstated medical review.

Preceding EEOC appeal cases, which are citied further below, indicate this is not an isolated instance, and other federal employees have experienced tangible harm by misstated and misrepresented FOH medical reviews and FOH's failure to adhere to the aforementioned federal regulations and healthcare industry standards. Harm to federal employees by the aforementioned unlawful actions, includes but is not limited to, the medical disqualification of employees from their federal jobs or

[3] https://foh.psc.gov/fohservices/chs/mep
[4] Joint Commission is a global accrediting organization that accredits different healthcare settings. Website at joincommission.org
[5] The Joint Commission Standards cited in this document are the 2020 Standards for Ambulatory Care (SAC).

assignments, denials of reasonable accommodations, and unlawful medical inquires into confidential health information as a result, and ultimately defeats the very purpose of the Rehabilitation Act. There are no laws, regulations, nor policies that support the FOH's departure from healthcare industry standards when servicing the federal sector. Every applicable law and federal regulation requires equal adherence to healthcare regulatory standards, as described below.

Thus, there is absolutely no explicable reason as to why medical professionals working within the federal sector should depart from the procedural requirements of their profession when forming a medical opinion during the provision of services to the federal sector. Nor is it in the Federal government's best interest to ignore this discriminatory practice if it truly intends to be a model employer for individuals with disabilities.

The very individuals the Rehabilitation Act seeks to protect, have carried the burden of enforcing the Rehabilitation Act's statues, through use of their personal resources and years of their time to litigate against the discriminatory practice of FOH illegitimate medical reviews through the administrative process, only for the majority of the time, to remain unheard—because presenting a genuine issue of material fact about a medical opinion, is in most cases, only made possible with healthcare industry knowledge.

Accordingly, Ms. Rausch seeks relief on behalf of similarly situated individuals as a result, and respectfully moves for class certification. At the minimum, injunctive relief should be provided, without additional proof of all class allegations as a condition of certification, since at this juncture, the Agency has not effectively contested the essential allegations that the FOH medical opinion in Ms. Rausch's instant case was misrepresented. Nor has the Agency provided contrary evidence that dispute Ms. Rausch's arguments and the cited evidence she has put forth that demonstrate the aforementioned FOH medical opinion was misrepresented. See Association for Disabled Americans, Inc. v. Amoco Oil Co.,

211 F.R.D. 457, 464 (S.D. Fla. 2002) (presuming adequate representation and certifying class bringing ADA suit where defendants failed to present contrary evidence). Alternatively, if further proof is required in order to obtain injunctive relief or to prove an essential element of class certification for the classes described below, Ms. Rausch wishes to seek discovery as necessary. As Ms. Rausch also seeks relief for all previously affected class members, to include damages, or as determined upon retaining competent counsel, Ms. Rausch will wish to seek the necessary discovery; and reserves all rights to do so. Fazal Rahman v. Department of Agriculture, Appeal No. 01A52527, (May 3, 2005) (Discovery allowed during hearing process to determine if class certification requirements are met.)

FACTUAL BACKGROUND AND ARGUMENT

1. **MEMORANDUM OF LAW AND AUTHORITY**

a. Federal Regulations and the EEOC Require Medical Decisions to be Made on Objective Medical Evidence

The EEOC has held that an individualized assessment under the Rehabilitation Act, should be based on objective evidence, an individual's work and medical history, and "*on a reasonable medical judgement that relies on the most current medical knowledge and/or on the best objective evidence"*; not on an "*employer's subjective evaluation*" and *"unfounded assumptions".* An Agency "*does not receive deference simply because the decision was made by it's health professionals."* Athanasios T. Bitsas v. Dep't of State, Appeal No. 0120051657, (September 30, 2009). An individualized assessment for purposes of providing a reasonable accommodation, should be made of the specific physical or mental limitations with regard to the actual job duties, and the precise barrier as well as the effectiveness of each potential accommodation. 29 C.F.R. 1630.9. The EEOC's regulations post the ADA Amendments Act of 2008 ("ADAAA"), provide that many disabilities can be assessed through "*predictable assessments*" and should be particularly straightforward. 29 C.F.R. §1630.2(j)(3).

Part 339 of Title 5 of the Code of Federal Regulations require disqualifications from federal employment on the basis of a medical condition to be made on "*reasonable medical judgement, and [based on] the duties of the position are such that a recurrence of the condition would pose a significant risk of substantial harm to the health and safety of the…employee or others that cannot be eliminated or reduced by reasonable accommodation or any other agency efforts to mitigate risk.*" 5 C.F.R. §339.206.

b. Federal Regulations Allow Federal Agencies to Conduct Medical Examinations, Fitness-for-Duty Determinations and Medical Inquiries in Very Limited Circumstances

Medical examinations and inquires made to determine an employee's qualifications for a reasonable accommodation must be treated as confidential medical records and may only be used as provided in Part 1630 of Title 29 of the Code of Federal Regulations. Outside of periodic medical examinations conducted by a medical evaluation program under 5 C.F.R. §339.205 or §339.301 for "*positions with specific medical standards and/or physical requirements*", a federal agency may only require a medical examination when they have "*reasonable belief, based on objective evidence, that there is question about the employee's continued capacity to meet the medical standards or physical requirements of a position."* 5 C.F.R. §339.103(a)(3).

In determining fitness-for-duty certification upon an employee's return from Family Medical Leave Act ("FMLA)", an employer may seek a fitness for duty certification "*from the employee's health care provider"* only with regard to the particular condition that caused the employee's need for FMLA leave and "*is not entitled to a certification of fitness for duty"* unless *"reasonable safety concerns exist regarding employee's ability to perform his or her duties, based on the serious condition for which employees took such leave*." Reasonable safety concerns *"means a reasonable belief of significant risk of harm to the individual employee or others"* and *"an employer should consider the nature and severity of the potential harm and the likelihood that potential harm will occur."* 29 C.F.R. §825.312. FMLA

regulations provide that an employer may only obtain a second medical opinion about medical certification for leave taken under FMLA by a *"health care provider…not employed on a regular basis by the employer*" and "*may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion"*. 29 C.F.R. §825.307(b)(2) and 5 U.S.C.§6383(c)(1). In instances where a third medical opinion is necessary, as established under 29 C.F.R. §825.307(c), the health care provider must be designated and approved jointly by the employer and the employee. FMLA regulations also mandate that employers provide employees with a copy of the second opinion and third medical opinions "*upon request by the employee*" and "*within 5 business days".* 29 C.F.R. §825.307(d).

Any medical examination initiated by the employer upon an employee's return from FMLA must be job-related and consistent with business necessity. 29 C.F.R. §825-312(h). An employer may not administer medical tests simply because an "*employee suddenly starts to use increased amount of sick leave….unless the employer can demonstrate that such testing is job-related and consistent with business necessity*." 29 C.F.R. §1630.13(b), as amended post ADAAA. Furthermore, a medical examination provided by a federal agency to an employee, for purposes of determining medical qualifications for a position, "*must review and consider all…documentation supplied by the [employee's] private physician or practitioner".* 5 C.F.R. §339.303(b).

In reviewing mental health conditions, federal regulations require that a "*psychiatric examination or psychological assessment"* be conducted in accordance with *"accepted professional standards*" by a licensed and board-certified mental health professional, in a manner that only "*makes inquiries into a person's mental fitness as it directly relates to successfully performing the duties of the position without significant risk to the…employee or others, and/or the vulnerability of business operations and information systems to potential threats*" and is only allowed when an authorized general medical

examination indicates no physical explanation for behavior and actions that may affect the safe and efficient performance of the…employee, the safety of others, as described above. 5 C.F.R. §339.301. Such examinations must be carried out in accordance with 5 C.F.R. §339.103 and must comply with the ADA, Rehabilitation Act and be made with consideration to the ADA's definition of a "*qualified individual",* meaning the individual possesses the requisite skill, experience, education, and other job-related requirements of the position. Nothing in Part 339 of Title 5 of the Code of Federal Regulations, which governs medical decisions used by federal agencies in determining the employment, terms and conditions of federal employees, departs from healthcare industry standards that are routinely followed when making a medical decision.

Part E of 5 C.F.R. §293, provides that federal agencies are also required to secure records maintained through it's occupational health processes in employee medical file systems, according to established "*written internal instructions*" that "*preserve confidentiality*" and ensure the *"right of access…to the records,… by the employee"*. 5 C.F.R. §293.503.

c. Standard Written Policies that Uphold Medical Staff Standards in the Healthcare Industry are Established by the Agency

Healthcare professions have long had well-established standards and procedural policies issued by authoritative bodies, that govern the field of Occupational Medicine and the general process to be followed when forming a medical opinion. Such authoritative bodies include, but not limited to, The American College of Occupational and Environmental Medicine ("ACOEM"), The World Health Organization ("WHO")'s Disability Assessment Schedule (WHODAS 2.0), the American Psychiatric Association ("APA") and it's internationally known Diagnostic and Statistical Manual of Mental Disorders ("DSM-5"), and the Federal of State Medical Boards ("FSMB") as cited in Ms. Rausch's ***June 5, 2020 Motion to Amend*** for her instant case.

As detailed in Ms. Rausch's ***April 12, 2021 Supplement to Complainant's March 25, 2021 Motion to Compel and Reply to the Agency's (April 5, 2021) Opposition to Complainant's March 25, 2021 Motion to Compel ("April 12, 2021 Supplement and Reply")***, the Agency's FOH division is indeed still accredited by the Joint Commission through its contract company, STGi International Inc., ***Exhibit ("Ex.") 14 of April 12, 2021 Supplement and Reply,*** and does have policies in place to maintain Joint Commission Accreditation, all which support "*medical opinion[s] on cases involving Reasonable Accommodation(s)"* as directly stated in STGi International's April 2021 job postings for *"FOH- Physician Reviewing Medical Officer (RMO)",* and referenced in the Agency's publicly available August 16, 2016 Privacy Impact Assessment for the FOH *"Staff Portal Website".* ***Exhibits 1-9 of April 12, 2021 Supplement and Reply.***

A. To briefly recap, the Agency policies that FOH is required to adhere to, as a result of being TJC Accredited, but failed to do so in providing the April 16, 2020 Medical Review, and *individualized assessment,* in response to Ms. Rausch's request for a reasonable accommodation, include, but are not limited to:

   1. The documentation of a complete medical record using a standardized format used to document care, treatment or services, which describes the objective clinical evidence and specific elements of health information that was considered, such as conclusions and impressions from the individual's medical history and physical examination, in forming the medical opinion, and justifying the results of the FOH services provided. ***See TJC Standard Record of Care ("RC") .01.01.01, RC.02.01.0, and TJC Standards for Medication Management ("MM").01.01.01, MM.07.01.01, and MM.07.01.03 at Ex.(s) 144, 146, 159, and 160 of April 12, 2021 Supplement and Reply.***

2. The written policy that requires timely entry and authentication of documents into a clinical record. See ***TJC Standards RC.01.02.01 and RC.01.03.01 at Ex. 144 -145 of April 12, 2021 Supplement and Reply.***

3. The written policy for reviewing its clinical records to confirm that required information is present, accurate, legible, authenticated, and completed on time. ***TJC Standard RC.01.04.01 at Ex. 156 of April 12, 2021 Supplement and Reply.*** As evident by the February 12, 2021 through February 25, 2021 emailed communications between FOH and Ms. Rausch, the aforementioned April 16, 2020 Medical Review never made it into FOH's electronic health record system, the "*FedHealth Portal",* thus, the April 16, 2020 medical review was never subject to the required quality review under TJC Standard Record of Care ("RC") .01.04.01. Had the medical review been subject the required quality review, a misrepresentation of Ms. Rausch's health information and qualifications for a reasonable accommodation would not have occurred.

4. The written policy that identifies how data and information enters, flows within, and leaves FOH, as required by TJC Standard Information Management ("IM") 01.01.01, Element of Performance ("EP") 2, at ***Ex. 147 of April 12, 2021 Supplement and Reply.***

5. The written policy that addresses how privacy of information is managed and limited, as required by TJC Standards IM.02.01.01, IM.02.02.01 and IM. 02.02.03, which includes written policies that *"protects the privacy health information"* and *"effectively manages the collection of health information"* while maintaining data integrity. ***Ex. 147 through 154 of April 12, 2021 Supplement and Reply.***

6. The written policy that describes the process for disclosing health information only as authorized by the individual who is subject of the information, or as consistent with law and regulations***. See TJC Standard IM.02.01.03 at Ex. 151 of the April 12, 2021 Supplement and Reply.***

7. The written policy that defines when and by whom the removal of health information is permitted, and that addresses the integrity of health information against unauthorized alteration, unauthorized disclosure, intentional destruction, unintentional change, loss, damage, and accidental destruction. ***See TJC Standard IM.02.01.03, EP 2 at Ex. 151 of the April 12, 2021 Supplement and Reply.***

8. The written policy that defines the process followed by FOH to check accuracy of the health information entered into the medical records. TJC Standards RC.01.04.01. and RC.01.05.01 require FOH to audit its clinical records to ensure accuracy and retain clinical records in accordance with law and regulation. ***Ex. 145 of April 12, 2021 Supplement and Reply.***

9. The written policy and standard operating procedure that defines how FOH communicates and ensures each one of the Client Rights under the 'FOH Client Rights and Responsibilities Doctrine. ***Ex. 125 through 134 of April 12, 2021 Supplement and Reply.*** [6]

10. The policies that require FOH to inform individuals "o*f the name of the practitioner…who has primary responsibility for …[the] services*" provided, require FOH to "*establish a complaint resolution process*" and "*evaluate all allegations and*

[6] Also viewable at https://foh.psc.gov/tjc/randr/roles.pdf, https://foh.psc.gov/tjc/randr/mocksurvey.pdf, https://foh.psc.gov/tjc/randr/terms.pdf, https://foh.psc.gov/tjc/randr/foh-policymanualreferencelist.pdf

suspected cases of neglect, exploitation, and abuse", plus *"report"* such matters to appropriate authorities. ***TJC Standards Rights of Individual ("RI") 01.04.01, RI.01.06.03 and RI.01.07.01 at Ex. 156-157 of April 12, 2021 Supplement and Reply***.

11. The FOH "Informed Consent for Occupational Health Services Policy" which requires FOH to obtain permission from individuals after fully informing them of all possible consequences, of the FOH counseling, treatment, or services, that require informed consent. ***Ex. 131 and 132 of April 12, 2021 Supplement and Reply***.

2. **Summary of Allegations Applicable to Classes**

None of the aforementioned federal regulations or standard healthcare industry policies were followed during the process of the Agency utilizing a medical opinion by FOH in response to Ms. Rausch's reasonable accommodation request in her instant case; and EEOC federal sector appeal cases evidence this is not an isolated instance.

Specifically, an individualized assessment based on objective evidence of Ms. Rausch's work and medical history, the actual limitations imposed by her health condition on her job duties were never assessed, and evidence of an effective accommodation went completely ignored, contrary to the requirements under Part 1630 of Title 29 C.F.R.

Furthermore, the FOH physician who provided the April 16, 2020 'medical review' is not a psychiatrist nor psychologist, nor any type of mental health specialist, yet made completely baseless and false statements about Ms. Rausch's mental capacity without once considering any objective and factual information or evidence, and without ever examining Ms. Rausch, as required under Part 339 of Title 5 of the Code of Federal Regulations. FOH did not provide Ms. Rausch with the name of the FOH physician nor maintain Ms. Rausch's health information in the employee health file system as required

by under Section 293 of Title 5 C.F.R. FOH's failure to adhere to the aforementioned regulations and standard policies resulted in a misstated and misrepresented medical review that misconstrued her qualifications for a reasonable accommodation, misused her health information for malicious purposes, and appears to have made an attempt to disqualify her from her job based on a medical examination that never occurred by FOH; although Ms. Rausch's performance appraisals evidence she has exceeded performance expectations at the Agency annually.

Ms. Rausch has established questions of law and fact about FOH policies and practices, that adversely affect the terms, conditions, and employment of all federal employees, on the basis of disability, perceived or otherwise, who are subject to a federal agency's use of FOH medical reviews. Numerous EEOC appeal cases indicate this is not an isolated instance in the federal sector, and a practice of departing from applicable laws, regulations, and healthcare industry standards has resulted in the issuance of misstated and/or misrepresented medical reviews and 'medical opinions' by FOH and other federal sector medical practitioners, that are not based on factual work and medical history or factual medical evidence. Nor do these appeal cases evidence that the medical opinions relied on reasonable medical judgement and the most current medical knowledge and available objective evidence; and many strongly suggest the there has been a practice of issuing medical opinions that are based on agency personnel's unfounded assumptions and prejudices, or subjective evaluations that depart from the standards of the medical profession, as further explained below.

B. Misstated and Misrepresented Medical Opinions have Adversely Affected the Terms, Conditions and Employment of Federal Employees

Precedent EEOC appeal cases, as described below, evidence that misstated and misrepresented medical opinions have been a repeated occurrence within the federal sector, in not only determining an employee's qualifications for a reasonable accommodation, but also in determining an individual's fitness for duty and medical qualifications for federal positions, and determining whether an individual

poses a 'direct threat'; in turn defeating the Federal Government's goals in becoming a model employer for people with disabilities. [7]

In several instances, federal agencies have medically disqualified employees from their jobs through using FOH medical opinions that only reviewed medical documentation, were not based on a medical examination by FOH, contradicted the medical opinions of specialists and the private physicians of the employees, and/or make no reference to objective evidence that indicate the inquires were truly job-related or based on business necessity, or reasonable belief of incapacity, as defined in 5 C.F.R. §339.103(a)(3). Liz. V. Department of Justice, Appeal Nos. 0120162835 and 0120170199 at 1, (May 14, 2018) (Complainant's 12 year employment is terminated following medical leave taken for a kidney transplant due to FOH, despite that Complainant's physician cleared her to return to work with no medical restrictions.) Tom S. v. Dep't of Energy, EEOC Appeal No. 0120180345 at 3 and 10, (December 18, 2019) (FOH medical opinions assert complainant is unable to perform duties and essential functions, despite complainant's physician's report of good prognosis.) Abe K. v. Department of Justice, Appeal Nos. 0120180724 and 0120181492 (May 14, 2018) (medically disqualified due to color vision deficiency based on FOH review of medical examination paperwork, not an actual examination by FOH.) Arlene v. Dep't of Homeland Security, Appeal No. 0120180055 at 4, (September 24, 2019) (complainant alleged "*she was wrongly terminated from her position, as her level of anxiety was never determined by FOH, but merely assumed.*")

C. **Interference with Rights Under The Rehabilitation Act and American Disabilities Act**

Employers, to include federal agencies, have a responsibility to conduct "*individualized assessments*" of the "*condition, manner, duration"* of an individual's impairment and consider the

[7] U.S. President Executive Orders 13548 and 13163

"nature and severity", as well as the impact on *"major life activities"*, in determining an individual's qualifications for a reasonable accommodation, as provided in 29 C.F.R. 16230.2(j)(4). The Agency's FOH office provides these "*individualized assessments*" through FOH Medical Reviews, for reasonable accommodation requests made by employees at the Federal Agencies it contracts with.[8] In Ms. Rausch's instant case, the FOH office provided an individualized assessment that did not consider any of the objective, factual information, as evident by the aforementioned policies it departed from, the February 2021 emailed communications between Ms. Rausch and FOH, which are further described in Ms. Rausch's ***March 30, 2021 Motion for Partial Summary Judgement and April 19, 2021 Supplement and Reply to the Agency's Opposition***. Regardless of whether Ms. Rausch qualified or not, for a reasonable accommodation, this practice by FOH, at the minimum evidences an interference with rights under the American Disabilities Act ("ADA"), as amended, and poses a threat to rights under The ADA and Rehabilitation Act for all federal employees.

EEOC appeal cases demonstrate FOH medical opinions have been used to justify denying or eliminating reasonable accommodations to employees with obvious disabilities such as "*profound deaf-since birth*" and "*totally blind",* in retaliation for protected EEO activity and opposition, despite evidence that effective accommodations were indeed available. Aldo v. Dep't of Health and Human Services, Appeal No. 0120172838, (February 21, 2019) and Clayton v. Department of Transportation, Appeal No. 01-2012-0350, at 1 and n.3 (November 15, 2015).

FOH medical opinions that contradict the medical opinions of medical specialists[9], and result in denials of reasonable accommodations also appears to be a common practice. Carl v. Department of Treasury, Appeal No. 0120110241 (October 15, 2015) (FOH physician "*who was not an Optometrist*"

[8] See https://foh.psc.gov/fohservices/chs/mep

[9] American College of Occupational and Environmental Medicine (ACOEM)'s Competencies include the appropriate consultation of medical specialties. ***See 79 at 6-5-2020 All Attachments.***

nor an Ophthalmologist, made a diagnosis of presbyopia without conducting an eye exam, and was deemed 'credible' because the complainant didn't exhibit difficulty reading physical documents at the hearing, despite that complainant's Optometrist indicated that eye strain was *specifically* due to computer vision syndrome and large amounts of computer use.) Mac O. v. Dep't of Energy, Appeal No. 2019000825 at 3, (February 28, 2020) (FOH did not consider recommendation made by Complainant's doctor's recommendation to accommodate medication schedule.) Reita v. Dep't of Housing, Appeal No. 0120160803 (April 5, 2018) (FOH didn't consider the purpose for which reasonable accommodation was requested for –to facilitate attendance to a 15-week trauma recovery program for Post Traumatic Stress Disorder/PTSD.)

The EEOC has held that "*The [American Disabilities Act] ADA prohibits not just retaliation, but also 'interference' with the exercise or enjoyment of ADA rights*" and *"As with ADA retaliation, an applicant or employee need not establish that he is an 'individual with a disability' or 'qualified' in order to prove interference under the ADA."* EEOC Enforcement Guidance on Retaliation and Related Issues, Notice No. 915.004 (August 25, 2016). The interference provision goes beyond the retaliation prohibition to make it also unlawful to coerce, intimidate, threaten, or otherwise interfere with an individual's exercise of any right under the ADA, or with an individual who is assisting another to exercise ADA rights. Because the *"interference"* provision is broader, it will reach instances when conduct does not meet the "*materially adverse*" standard required for retaliation. The Commission's Enforcement Guidance provides that examples of inference include "*coercing an individual to relinquish or forgo an accommodation to which he or she is otherwise entitled*" and "*issuing a policy or requirement that purports to limit an employee's rights to invoke ADA protections*." Providing individualized assessments that are not based on an individual's factual health information, and are misstated with the intention of disqualifying individuals from reasonable accommodations under the

Rehabilitation Act, is at the minimum, an interference with ADA rights, a failure to engage in the interactive process in good faith and failure to conduct an actual individualized assessment; and in many cases resulted in denials of reasonable accommodations. The EEOC has held that an *"individualized assessment must be made, taking into account the best objective evidence*" and an Agency's "*conclusions based on their unfounded assumptions*" constitutes a failure to conduct an individualized assessment. Athanasios T. Bitsas v. Dep't of State, Appeal No. 0120051657, (September 30, 2009).

D. Unlawful Medical Inquires and Improper Use of Medical Information

As a result of the FOH's failure to adhere the Agency's own policies that are routinely followed by the healthcare industry, such as the aforementioned TJC standards, to include but not limited to, TJC Standard IM 16.01.01.01, EP 2, Ms. Rausch's medical information was improperly released, improperly maintained, and improperly used for purposes other than for what the medical information was provided for, as detailed in Ms. Rausch's ***Motion for Partial Summary Judgement*** in her instant case. EEOC appeal cases evidence this is also a common trend in the federal sector.

Medical information obtained during the reasonable accommodation process and the FMLA approval process, have been routinely repurposed by federal agencies in conjunction with FOH, to make determinations about an employee's fitness-for-duty and medical qualifications for a position, often by only reviewing paperwork; despite that federal regulations require that fitness-for-duty certification be obtained from the "*employee's health care provider";* and medical qualifications be determined through medical examinations after the employee accepts the Agency's offer to provide one. 29 C.F.R. §823.312(a) and Part 339 of 5 C.F.R., Subpart C.

In Whitney G.,1 v. Department of Homeland Security, Appeal No. 0120162460, (May 9, 2018), which occurred in Dallas, Texas, the complainant's medical documentation that was originally provided to the Agency for FMLA, was sent to the Agency's *"Headquarters*", without the complainant's consent,

which resulted in "*a letter from a Federal Occupational Health (FOH) physician*" that disqualified the complainant from his position, based on a review of paperwork and no medical examination, by an FOH physician that was located across the country who at no point interacted with complainant. The complainant averred that a his first-line supervisor and the Administrative Officer "*were behind the proposals*" to remove him from his federal employment, appealed the removal, however his removal was upheld, partially because "*Complainant failed to raise a genuine issue of material fact regarding FOH's determination that he was not medically qualified for his BDO position."*

In Peggie v. Dep't of Homeland Security, Appeal No. 0120182362, at 3, 5 (July 30, 2019, the agency "*determined that Complainant was medically disqualified for her position and she was subsequently terminated*" following an FOH Medical Review Officer's finding, shortly after the complainant provided medical documentation to support an FMLA request for migraines and anemia. Similar situations in which agencies in conjunction with FOH used medical information obtained for FMLA purposes to medically disqualify federal employees from their jobs include Arlene v. Dep't of Homeland Security, Appeal No. 0120180055 at 4, (September 24, 2019), Liz. V. Department of Justice, Appeal Nos. 0120162835 and 0120170199 at 1, (May 14, 2018), Abe K. v. Department of Justice, Appeal Nos. 0120180724 and 0120181492 (May 14, 2018), and Ted L. v. Dep't of Homeland Security, Appeal No. 0120180514, (March 8, 2018).

E. Retaliation and Interference with EEO process and the NO FEAR ACT

Notably, federal employees have become keenly aware of the federal sector's practice of misusing "fitness for duty exams" to retaliate against whistleblowers.[10] The April 16, 2020 medical review provided by the Agency during discovery in Ms. Rausch's instant case demonstrates retaliatory intent as well, by it's obvious misrepresentations that attempt to assert Ms. Rausch is not "*able to*

[10] Mspb.federaltimes.com/2014/07/28/whistleblowers-must-watch-for-retaliatory-fitness-for-duty-exams/

effectively perform her job duties", which is directly contradicted by the fact that she has exceeded performance expectations each year during the last 10 years of her federal employment. This tactical maneuver by the Agency was clearly intended to gain an unfair advantage during the hearing process and prejudice Ms. Rausch's ability to prove intentional discrimination, by using a completely false and fabricated medical opinion as the Agency's articulated proffered non-discriminatory reason for its actions.

Sadly, EEOC appeal cases also evidence this trend, where it is clear federal employees who alleged retaliation, knew there was something unlawful about the medical opinions that were weaponized against them by federal agencies; yet, they were prejudiced in the process, because presenting a "*genuine issue of material fact*" about an opinion issued by such a highly specialized field, such as that of medicine, would require equally specialized industry knowledge.

In Marya v. Pension Benefit Guaranty Corporation, Petition No. 0320160066 (February 17, 2017), following the petitioner's whistleblowing activities about a ponzi scheme, the agency ordered the petitioner to be evaluated by FOH and a 'medical consultant' in which the petitioner was determined to be "*unfit for duty"* and to be experiencing a "*psychotic delusional disorder*", which appears to be a medical determination that obviously attempts to discredit the petitioner's allegations in favor of the agency; as the MSPB even determined that the Agency's actions were done with retaliatory intent and her behavior did not constitute a direct threat. The petitioner asserted that she was harassed due to her medical condition and subjected to highly personal and invasive unlawful fitness for duty examinations. Yet, the fitness for duty examinations were deemed *"lawful*" on what appears to be nothing more than the Agency's denial of the petitioner's statements, and assertion that her allegations were due to a "*delusional disorder*". The petitioner spent 7 to 8 years disputing the matter of unlawful medical

examinations, only for a medical determination that appears to be absent of medical evidence, to be deemed credible.

In Ralph v. Dep't of Homeland Security, Appeal No. 0120182433 at 4 and 6, (January 23, 2020), the Agency appears to disguise it's facility's issue of toxic mold and noncompliance with acceptable health and safety standards required by the Occupational Safety and Health Administration ("OSHA"), with an FOH assessment that determined the complainant's severe medical reactions were simply due to his allergy to iodine, although other employees complained about similar environmental hazards. Notably, agency management officials strictly enforced a protocol that required FOH to route related assessment reports of the toxic mold conditions through management and prohibited FOH personnel from engaging in directly communications with employees, including complainant, although the relevant report made references to Complainant's health information and allergies to iodine. Id at 3.

3. **Class Definitions**

29 C.F.R. §1614.204(a)(1) provides that "*A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information*." The EEOC has held that classes may include prospective members. Brantley v. Tennessee Valley Authority, 02842582, 1453/F11 (1986). Accordingly, Ms. Rausch seeks to represent the following classes, to which there is a common question of law and fact:

1. All federal employees who were denied a reasonable accommodation as a result of the Agency's consideration of a Federal Occupational Health medical review that did

not adhere to applicable medical review industry standards from the year 2009 till present.

2. All federal employees whose benefits, terms, and/or conditions of employment were adversely affected as a result of the Agency's consideration of a Federal Occupational Health (FOH) medical review that did not adhere to applicable healthcare industry standards, from the year 2009 till present.

3. All federal employees whose reasonable accommodation requests will be subject to a Federal Agency's consideration of the Agency's FOH medical review, in the future.

4. All federal employees whose terms and conditions of employment will be adversely affected as a result of a Federal Agency's consideration of the Agency's FOH medical review, in the future.

5. All federal employees who were subject to the misuse of their private healthcare information through the course of a Federal Agency obtaining an FOH medical review.

Ms. Rausch reserves the right to amend or further define these classes, or this complaint, through additional pleadings, hearings, or motions. These classes may be further sub-classed if necessary, and Ms. Rausch reserves the right to do so if necessary.

4. **Numerosity**

29 C.F.R. §1614.204(a)(2)(i) provides that a requirement of a class complaint includes an allegation that "*The class is so numerous that a consolidated complaint of the members of the class is impractical".* While Ms. Rausch does not know the exact size of the class nor the identities of the class members since this information is in the exclusive control of the Agency, the EEOC's Federal Sector

data for years 2015 through 2018 and the Agency's own NO FEAR public data for years 2016 through 2020, indicates that the alleged discriminatory practices impact a minimum of an estimated average of 5731 individuals a year. According to the EEOC's website, a number of 4154 complaints on the basis of physical disability and 1,624 complaints involving reasonable accommodations were filed in the year 2016, 6081 complainants filed complaints on the basis of disability in year 2017[11], and 6960 complainants filed complaints on the basis of disability in the year 2018 [12], averaging 5731 complainants a year[13] who file EEO complaints on the basis on disability.

In reviewing the Agency's own NO FEAR public data, the Agency has averaged 157 complaints a year on the basis of disability and 69 reasonable accommodation complaints a year during years 2016-2020, although only 1 to 3 of those complaints have resulted in a *"finding of discrimination"* annually.[14] The Agency's Health Resources and Services Administration ("HRSA"), which accounts for only 2.5% of the Agency's workforce, denied 74 reasonable accommodation requests in 2017 [15] and 86 reasonable accommodation requests in the year 2018, according to its Annual MD-715 reports. HRSA's MD-715 report for the year 2019, which was posted to its website by July 22, 2020, did not provide the number of reasonable accommodation cases processed by the Agency.[16] Notably, the EEOC's annual federal sector reports evidence that while 2,378 complaints were filed in the year 2015 [17] on the basis of physical disability, the number doubled by the year 2018 in which 4,666 complaints were filed on the

[11] 1,946 of those complaints were related to reasonable accommodations.
[12] The EEOC did not publicly post data for years 2019 through 2020.
[13] This number is an estimate, as the EEOC's 2016 annual report does not provide disability complaints on the basis of mental disability.
[14] https://www.hhs.gov/about/agencies/asa/eeo/resources/no-fear-act/fy21-q2.html#complaints
[15] Pg. 62 at https://www.hrsa.gov/sites/default/files/hrsa/eeo/hrsa-2017-md-715-report.pdf
[16] Ms. Rausch first called attention to the FOH misrepresented medical review used by HRSA in denying her a reasonable accommodation on June 5, 2020 through motion on the EEOC's public portal.
[17] EEOC's 2015 Annual Report of Federal Workforce

basis of physical disability.[18] The aforementioned data undisputedly meets the numerosity requirement for a class complaint.

5. **Commonality and Typicality**

Pursuant to 29 C.F.R. §1614.204(a)(2)(ii), a class complaint must include "*questions of fact common to the class*" and provides that (a)(2)(iii) "*The claims of the agent of the class are typical of the claims of the class".* The purpose of the commonality and typicality requirements is to ensure that class agents possess the same interests and suffer the same harm or injury as the members of the proposed class. Natalie v. Department of Defense, Appeal Nos. 0120180009 and 0120181896, (February 21, 2019), citing General Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 156-57 (1982). The putative class agent must establish an evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination. Garcia v. Department of the Interior, EEOC Appeal No. 07A10107 (May 8, 2003). A number of common questions of law and fact exist in this case, because it involves policies and practices of the Agency's FOH program that present barriers to a federal employee's access to rights under the Rehabilitation Act, as amended. Compare Access Now, Inc. v. Ambulatory Surgery Center Group, Ltd., 197 F.R.D. 522, 529, 530 (S.D. Fla. 2000) (certifying a class of disabled persons who alleged violations of the ADA by operators of medical facilities, based on plaintiffs' allegations that the defendants had discriminated against them through various structural and operational barriers.)

Commonality requires that there be questions of fact common to the class, that is, that the same action or policy affected all members of the class. Complainant v. Department of Housing and Urban Development, Appeal No. Appeal No. 0120113119, (June 6, 2014). Generally, this can be accomplished

[18] Table B 8 FY 2018 Complaints filed basis and issues

through allegations of specific incidents of discrimination, supporting affidavits containing anecdotal testimony from other employees who were allegedly discriminated against in the same manner as Complainant, and evidence of specific adverse actions taken. Belser v. Department of the Army, EEOC Appeal No. 01A05565 (December 6, 2001) (citing Mastren v. United States Postal Service, EEOC Request No. 05930253 (October 27, 1993). Factors to consider in determining commonality include whether the practice at issue affects the whole class or only a few employees, the degree of centralized administration involved, and the uniformity of the membership of the class, in terms of the likelihood that the members' treatment will involve common questions of fact. Garcia v. Department of the Interior, EEOC Appeal No. 07A10107 (citing Mastren, EEOC Request No. 05930253). Moten v. Federal Energy Regulatory Commission, EEOC Request No. 05910504 (Dec. 30, 1991); Mastren v, USPS, EEOC Request No. 05930253 (Oct. 27, 1993).

As described above, numerous EEOC appeal cases evidence allegations involving FOH, that are similar to those of Ms. Rausch and meet the commonality and typicality requirements. In Eva M. v. Dep't of Health and Human Services, Appeal No. 0120152310, at 2 and 4 (November 14, 2017), complainant alleged that *"a physician, who is a contractor of Federal Occupational Health (FOH), issued medical evaluations that contained multiple errors regarding her medical condition",* which the Agency used to justify denying a reasonable accommodation. In Arlene v. Dep't of Homeland Security, Appeal No. 0120180055 at 4, (September 24, 2019), the complainant alleged "*she was wrongly terminated from her position, as her level of anxiety was never determined by FOH, but merely assumed.*" (In Mac O. v. Dep't of Energy, EEOC Appeal No. 2019000825, at 3, (February 28, 2020), the complainant wanted to appeal the FOH decision because it did not consider their doctor's recommendation, but was not informed on how to proceed, despite the fact that FOH was accredited by TJC at the time, and should have had a "complaint resolution process" in place as required by TJC

Standards RI.01.04.01, RI.01.06.03 and RI.01.07.01. ***See Ex. 156-157 of April 12, 2021 Supplement and Reply***. In Dominica H. v. Dep't of Health and Human Services, Appeal No. 0120150971, (November 22, 2017), the complainant alleged she was denied a copy of the Federal Occupational Health's physician report, even after she requested it through FOIA; despite that FOH has a responsibility to provide employees with any medical records it maintains.

Accordingly, Ms. Rausch provides that the common questions of fact include, but are not limited to:

Whether federal employees have been subject to disability discrimination when:

A. FOH failed to provide medical opinions based on factual and objective evidence, resulting in an adverse impact to the terms and conditions of employment, or employment itself.

B. FOH failed to provide medical opinions based on sound medical judgement and current medical knowledge established by authoritative healthcare industry entities and medical standards.

C. FOH failed to conduct individualized assessments and medical examinations as required by applicable federal regulations.

D. FOH issued a misstated or misrepresented medical review that misconstrued an individual's qualifications for a reasonable accommodation.

E. FOH issued misstatements about a federal employee's health condition that was used by a federal agency to justify adversely affecting the terms and conditions of employment, or the employment itself.

F. FOH issued misstatements about a federal employee's health condition that were used by an Agency to misconstrue the employee's ability to perform their job, resulting in adverse impact to the terms and conditions of employment, or employment itself.

G. FOH failed to follow Agency policies and the healthcare industry regulatory standards, resulting in a misrepresented medical opinion that was used by a federal agency to adversely affect an employee's terms and conditions of employment, or employment itself.

H. FOH provided a misrepresented medical opinion that was used or intended to be used by the Agency to gain an unfair advantage in the EEO complaint process or similar administrative process.

J. FOH failed to uphold Agency policies that ensure the protection of confidential medical information, resulting in the misused of medical information for purposes other than intended use, to include but not limited to, retaliatory actions, unsubstantiated fitness-for-duty exams and medical disqualifications.

The EEOC has held that a central policy that denies benefits of employment without an individualized assessment into the individual's specific disability condition sufficiently supports the inference that a uniform class is being harmed by that policy or practice. Vena H., et. al. v. Dep't of State, Appeal No. Appeal No. 0720110007 (June 6, 2014). The FOH Office provides centralized administration and serves as a centralized decision-making authority for medical reviews used in reasonable accommodation cases and other medical employability services for the entire federal government service, thus has the effect of discriminating against the proposed class as a whole. Natalie v. Department of Defense, Appeal Nos. 0120180009 and 0120181896, (February 21, 2019). EEOC appeal cases evidence that multiple federal employees have raised the same questions of fact as Ms. Rausch, in different forms, although they did not have the industry knowledge to articulate with

specificity exactly how these FOH medical opinions had been unfairly weaponized against them, as further described below.

Regarding typicality, the EEOC has held that claims need not be identical. Typicality requires that Complainant's claims be sufficiently typical to encompass the general claims of the class members so that it will be fair to bind the class members by what happens with the agent's claims. Natalie, citing Cosentine, et al. v. Department of Homeland Security, EEOC Appeal No. 01A23856 (Mar. 24, 2004)

6. **Precedent EEOC Appeal Cases Evidencing Typicality Include, But Are Not Limited To:**

In Arlene S. v. Department of Homeland Security, EEOC Appeal No. 0120180055, (September 24, 2019), "*Complainant believes that she was wrongly terminated from her position, as her level of anxiety was never officially determined by the FOH, but merely assumed."* Ms. Rausch has clearly articulated in all previous related motions and related communications that the FOH opinion utilized in her case made assumptions that were not determined on the scientific standards and established procedures that physicians are routinely required to follow, and the Agency has failed to dispute any of Ms. Rausch's allegations nor provide and contradictory evidence to the authoritative sources cited by Ms. Rausch.

In Carl v. Dep't of Treasury, Appeal No. 0120110241 (Oct. 15, 2015), a Complainant with "*eye strain and blurry vision*" was denied a *"reasonable accommodation request on the basis that Complainant was not substantially limited in a major life activity*" as a result of an assessment by an "*FOH physician, who was not an optometrist".* Furthermore, the testimony of the FOH physician who did not specialize in optometry or ophthalmology, asserted a diagnosis that the Complainant had "*presbyopia*" and the testimony was deemed "*credible",* resulting in a judgement against the complainant. Ms. Rausch has argued that the FOH opinion provided in her case was not credible, in accordance with authoritative governing sources, as the FOH physician did not specialize in mental health, and routine medical industry standards require physicians to consult and defer to specialized

medical providers when making such medical determinations**.** The field of Occupational Medicine is no exception, as the American College of Occupational and Environmental Medicine ("ACOEM")'s competencies, core knowledge and skills require the use of consultants in related disciplines and require *that diagnosis and evaluation of mental health be assessed by a psychiatrist.* ***See June 5, 2020 Motion to Amend and 79-81 at 6-5-2020 All Attachments.***

In Clayton C v. Department of Transportation, Appeal No. 01-2012-0350 (November 17, 2015), it appears an FOH medical report[19] was used by the Agency to justify sustaining the removal of a reasonable accommodation from an employee who was blind, in retaliation for protected EEO-activity when the employee spoke up "*about a co-worker's right to tele-work as a reasonable accommodation",* which the EEOC reversed upon appeal. Ms. Rausch has also alleged, that the FOH medical opinion provided in her case was intentionally misrepresented due to retaliatory motive.

7. **Adequacy of Class Agent**

The final requirement for class certification is that the Complainant and/or her representative adequately represent the class. To satisfy this criterion, Complainant or the representative must demonstrate that he or she has sufficient legal training and experience to pursue the claim as a class action and will fairly and adequately protect the interests of the class. Besler, et al. v. Dep't of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001); Woods v. Dep't of Hous. and Urban Dev., EEOC Appeal No. 01961033 (Feb. 13, 1998), cited in Natalie. The Class Agent must show that she is qualified, experienced, and generally able to conduct proposed litigation. Aurora C. v. Pension Benefit Guaranty Corporation, Drummond v. Dep't of the Army, EEOC Appeal No. 01940520 (Aug. 19, 1994).

[19] The FOH medical report is noted in the cases footnotes.

Ms. Rausch has the healthcare industry expertise necessary to articulate with *specificity*, the genuine issues of material fact, in the particular FOH policies and procedures that evidence the Agency's violation of the Rehabilitation Act, through FOH's departure from the healthcare industry standards as they apply to FOH case reviews. Ms. Rausch also has the healthcare industry expertise necessary to identify evidence that demonstrates genuine issues of material fact within FOH medical reviews themselves, should it be determined that additional discovery is necessary to certify this class complaint. Federal employees would be prejudiced in pursuing individual claims involving allegations of illegitimate FOH medical reviews; because articulating genuine issues of material fact about a medical review can usually only be accomplished with healthcare industry knowledge, given the field's highly specialized nature.

8. **Adequacy of Representation**

The Commission has held that when typicality, commonality and numerosity have been satisfied, a class may be conditionally certified to permit a class agent time to obtain qualified counsel. Harrison-Gray et al. v. Department of Veterans Affairs, EEOC Appeal Nos. 01A42149, 01A42150, 01A42151 (July 6, 2005). Accordingly, Ms. Rausch respectfully moves for conditional class certification, contingent on obtaining qualified counsel. However, since the Agency has not been able to produce evidence that factually contradicts the evidence and authoritative sources provided by Ms. Rausch to date, nor has the Agency cited any law or regulation to support it's legal arguments in response to Ms. Rausch's assertions that the FOH medical review in her case is misrepresented; an absence of licensed counsel in this matter should not present a barrier to obtaining, at the minimum, the injunctive relief sought by Ms. Rausch.

9. **RELIEF SOUGHT**

MD-110 provides that *"If it is found that the class agent or any other member of the class is a victim of discrimination, the relief provisions of 29 C.F.R. § 1614.501 shall apply";* which includes *"(1) Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur; (2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found will not recur; (3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position; (4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and (5) Commitment that the agency shall cease from engaging in the specific unlawful employment practice found in the case."* 29 C.F.R. § 1614.501.

For the foregoing reasons, the Agency should provide the defined classes of federal employees with injunctive relief, and other relief as deemed just and proper by EEOC at the recommendation of counsel, to include, at the minimum, but not limited to:

i. Stop the discriminatory practice of distributing misrepresented medical reviews from the

Agency's FOH office by, adhering to the applicable regulations cited in the above memorandum of law, and ensure the following:

1. Post all FOH policies and procedures on the FOH public website.

2. Update all Agency reasonable accommodation, FMLA and Medical Employability Agency policies to require a PIV card authenticated signature by FOH Medical Reviewing Officers, for any medical employability decisions that are based on an FOH medical opinion.

3. Require that all federal employees be provided with the name of the FOH Medical Reviewing Officer, and any issued medical opinion by FOH at the time an FOH medical opinion is used.

4. Require that medical information from employees for reasonable Accommodations, FMLA and all assessments by FOH's MEP be submitted to FOH directly from the subject employee to the FOH FedHealth Electronic Medical Record System.

Ms. Rausch reserves the right to amend and supplement relief sought, to include any damages the EEOC deems proper and just for affected class members.

CONCLUSION

For the foregoing reasons, Complainant, Claudia Rausch, *Pro Se*, moves for class certification, injunctive relief, and further relief as the EEOC deems just and proper and/or on the advice of counsel.

Dated: May 21, 2021
North Bethesda, Maryland

Respectfully submitted,

By: Claudia M. Rausch -S
Digitally signed by Claudia M. Rausch -S
Date: 2021.05.21 15:32:35 -04'00'

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complainant's Motion for Class Certification and Memorandum of Law in Support was served by the methods indicated below to the individuals named on May 21, 2021.

Claudia M. Rausch -S
Digitally signed by Claudia M. Rausch -S
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